

**REMARKS**

Claims 1-66 are pending in the application.

Claims 1-66 have been rejected.

Claim 8 has been canceled, without prejudice.

Claims 1, 9, 18, 22, 27, 29, 31, 35, 38, 48, 49, 52, 61, 63 and 65 have been amended, as set forth herein.

I. **CLAIM OBJECTIONS**

Claims 22 and 38 were objected to because of informalities. Claims 22 and 38 have been amended to correct the informalities identified in the Office Action. Accordingly, the Applicant respectfully requests the Examiner withdraw the objection to Claims 22 and 38.

II. **REJECTION UNDER 35 U.S.C. § 102**

Claims 1-8, 12-14, 18-44 and 48-66 were rejected under 35 U.S.C. § 102(e) as being anticipated by Farris (US 6,064,653). The rejection is respectfully traversed.

A cited prior art reference anticipates the claimed invention under 35 U.S.C. § 102 only if every element of a claimed invention is identically shown in that single reference, arranged as they are in the claims. MPEP § 2131; *In re Bond*, 910 F.2d 831, 832, 15 U.S.P.Q.2d 1566, 1567 (Fed. Cir. 1990). Anticipation is only shown where each and every limitation of the claimed invention is

found in a single cited prior art reference. MPEP § 2131; *In re Donohue*, 766 F.2d 531, 534, 226 U.S.P.Q. 619, 621 (Fed. Cir. 1985).

Independent Claims 1, 18, 27, 29, 31, 35, 48, 49, 52, 61, 63 and 65 have been amended to more clearly recite the Applicant's invention. Claims 1, 27, 31, 48, 49, 52, 61 and 63 have been amended to recite that a communication is switched to a second type communication path based on the importance of the communication. The Office Action asserts that Farris teaches a communication system that determines the importance of a plurality of time sensitive communications and prioritizes switching the communications from a first communication path to a second communication path based on the determined importance of the time sensitive communications, citing Farris, column 5, lines 16-45. While the cited passage discusses diverting calls to a public switched telephone network (PSTN) during periods of unacceptable data internetwork activity, the Applicant is unable to find a description in the cited passage of determining the importance of those calls and prioritizing their diversion based on that importance. Furthermore, where the Farris reference describes routing data signals either over the Internet or through the PSTN, that routing choice is based solely upon a determination of whether monitored traffic conditions indicate that Internet communication is below an acceptable threshold level for additional traffic. See Farris, column 14, lines 17-19.

In contrast, amended Claims 1, 27, 31, 48, 49, 52, 61 and 63 recite a method and apparatus that switches a communication to another communication path based on the importance of the communication. As such, Applicant respectfully submits that Farris fails to identically disclose each

and every element/feature of Applicant's claimed invention, arranged as they are in independent Claims 1, 27, 31, 48, 49, 52, 61 and 63 (and dependent Claims).

Independent Claims 18, 29, 35 and 65 have been amended to recite that communications which can be switched from a second communication path to a first communication path are identified, and only such identified communications are actually switched. As discussed above with regard to Claim 1, et al., the system described in the Farris reference will route all data signals through either the Internet or the PSTN based solely upon the monitored traffic conditions on the Internet. Thus, Farris does not disclose identifying communications that can be switched to a first type communication path and switching one of those identified communications to the first type communication path as recited in Claims 18, 29, 35 and 65. As such, the Farris reference fails to identically disclose each and every element/feature of Applicant's claimed invention, arranged as they are in independent Claims 18, 29, 35 and 65 (and dependent Claims).

With regard to independent Claim 57, the Office Action asserts that the Farris reference teaches transmitting a signal that causes a communication to be switched back and forth between a first type and second type communication path. The Applicant respectfully disagrees. The Farris reference describes the operation of the gateway as formatting data signals into TCP/IP packets and routing them through the PSTN or the Internet. See Farris, column 14, lines 16-37. However, the reference makes no mention of transmitting a signal that causes a communication to be switched between communication paths, as is recited in Claim 57. As such, the Farris reference fails to

identically disclose each and every element/feature of Applicant's claimed invention, arranged as they are in independent Claim 57 (and dependent Claim 58).

With regard to independent Claim 59, the Office Action states that the Farris reference shows receiving a signal that causes a communication to be switched between communication paths and relaying the signal to a switch. The Applicant respectfully disagrees. As discussed above with regard to Claim 57, the reference describes a gateway which operates to route call packets through either the Internet or the PSTN, but it does not disclose receiving and relaying a signal to cause a communication to be switched between communication paths. Therefore, the Farris reference fails to identically disclose each and every element/feature of Applicant's claimed invention, arranged as they are in independent Claim 59 (and dependent Claim 60).

Accordingly, the Applicant respectfully requests the Examiner withdraw the § 102(e) rejection of Claims 1-8, 12-14, 18-44 and 48-66.

III. REJECTION UNDER 35 U.S.C. § 103

Claims 9-11 and 45-47 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Farris in view of Dutnall (US 6,584,098). Claims 15-17 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Farris in view of Naudus (US 6,412,006). The rejection is respectfully traversed.

Claims 9-11, 15-17 and 45-47 depend from independent Claims 1 and 35, directly or indirectly, and incorporate the features/elements therein recited. Thus, for the same reasons given

above with respect to the §102 rejection of independent Claims 1 and 35, the Farris, Dutnall and Naudus references, either alone or in combination, do not disclose, teach or suggest all the features/elements of Claims 9-11, 15-17 and 45-47 and, therefore, a prima facie case of obviousness has not been established.

Accordingly, the Applicant respectfully requests withdrawal of the § 103 rejection of Claims 9-11, 15-17 and 45-47 .

IV. CONCLUSION

As a result of the foregoing, the Applicant asserts that the remaining Claims in the Application are in condition for allowance, and respectfully requests an early allowance of such Claims.

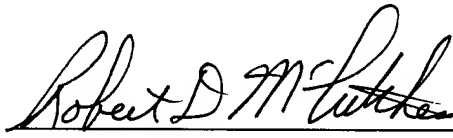
If any issues arise, or if the Examiner has any suggestions for expediting allowance of this Application, the Applicant respectfully invites the Examiner to contact the undersigned at the telephone number indicated below or at *rmccutcheon@davismunck.com*.

The Commissioner is hereby authorized to charge any additional fees connected with this communication or credit any overpayment to Davis Munck Deposit Account No. 50-0208.

Respectfully submitted,

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